

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,))
))
Plaintiff,))
))
vs.) 2:11-CR-453-PMP-CWH
))
DAVID M. MARK,) MINUTES OF THE COURT
))
))
Defendant.) DATED: March 28, 2013

PRESENT: THE HONORABLE PHILIP M. PRO, UNITED STATES DISTRICT JUDGE

DEPUTY CLERK: Donna Sherwood RECORDER: Henry Enriquez

COUNSEL FOR PLAINTIFF: Peter Levitt, Brian Pugh, Sarah Griswold

COUNSEL FOR DEFENDANT: Michael Fawer, Miles Mark

PROCEEDINGS: **EVIDENTIARY HEARING ON DEFENDANT'S MOTION TO DISMISS
INDICTMENT [104]**

9:00 a.m. Court convenes. Defendant is present on a PR Bond.

Mr. Levitt advises the Court Mr. Fawer spoke to him this morning and requested the Rule of Exclusion be invoked as to Ms. Griswold in reference to the July 20, 2011 teleconference with Mr. Pugh, Ms. Griswold and Mr. Mark.

The Court and counsel confer on which FBI Agent was also present at this teleconference and Mr. Fawer requests the Rule be invoked as to that agent also.

IT IS ORDERED the Rule of Exclusion is invoked.

Ms. Griswold steps out of the courtroom.

AUSA BRIAN DAVID PUGH, called on behalf of the Government, is sworn and testifies on direct examination by Mr. Levitt, cross examination by Mr. Fawer, redirect examination by Mr. Levitt, is questioned by the Court and then excused from the stand.

Mr. Levitt announces the Government has no further witnesses.

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10:38 a.m. Court stands at recess.

10:48 a.m. Court reconvenes. Ms. Griswold is present in the courtroom.

Mr. Fawer advises the Court he will testify and Mr. Miles Mark will do the examination.

MICHAEL S. FAWER, counsel for defendant, is sworn, and on inquiry by the Court, states he has spoken with his client regarding the attorney/client privilege and they are prepared to waive that.

On inquiry by the Court, Defendant David Mark states he waives his attorney/client privilege at this time.

MICHAEL S. FAWER testifies on direct examination by Mr. Mark, cross examination by Mr. Pugh, is questioned by the Court and then excused from the stand.

DAVID MILES MARK, Defendant, is sworn.

Mr. Levitt advises the Court it is the Government's position that anything the Defendant says in this proceeding can be used to impeach him.

Mr. Fawer advises the Court he takes issue with that.

The Court will not allow the Government to use the Defendant's testimony here today in cross examination at trial.

DAVID MILES MARK, Defendant, testifies on direct examination by Mr. Fawer.

12:15 p.m. Court stands at recess.

1:22 p.m. Court reconvenes.

DAVID MILES MARK, Defendant, having previously been sworn, resumes the stand and testifies further on cross examination by Mr. Levitt, redirect examination by Mr. Fawer, is questioned by the Court and then excused from the stand. **(Plea Agreement received as Government's Exhibit 1.)**

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The Court hears the arguments of Mr. Fawer.

AUSA SARAH GRISWOLD, called on behalf of the Government, is sworn and testifies on direct examination by Mr. Levitt, cross examination by Mr. Fawer, is questioned by the Court and then excused from the stand.

AGENT SEAN JONES, called on behalf of the Defendant, is sworn and testifies on direct examination by Mr. Fawer, cross examination by Mr. Pugh, redirect examination by Mr. Fawer, is questioned by the Court and then excused from the stand.

The Court hears the arguments of Mr. Levitt and Mr. Fawer.

The Court places its finding of fact and conclusions of law on the record.

IT IS ORDERED Defendant's Motion to Dismiss Indictment [104] is **denied**.

The parties shall proceed with the briefing on the Rule 29A Motion as instructed by the Court and the Court will hear argument on that motion on April 8th.

The Court hears arguments by Mr. Fawer and Mr. Pugh on Government's Motion to Exclude the Testimony of Defendant's Proposed Expert Butler, or in the Alternative, Limit James Butler's Testimony [80].

The Court will have a prompt ruling on that motion.

4:10 p.m. Court adjourns.

LANCE S. WILSON, CLERK
United States District Court
By: /s/
Donna Sherwood, Deputy Clerk